such a duty of care, quite apart from the contract, is recognized as existing towards strangers to the contract. It is admitted to exist when the article sold is "imminently dangerous," such as poisonous drugs, though the rule is not always confined to such goods. *Thomas* v. *Winchester*, 6 N. Y. 397; see *Bright* v. *Record Co.*, 88 Wis. 299. So also in implied invitation cases. *Heaven* v. *Pender*, L. R. 11 Q. B. 503. When under a traffic agreement one railroad company negligently furnished another a defective car by which a servant of the latter was injured, recovery was allowed on the ground that the defendant railroad must have foreseen that the car would be operated by employees, and consequently owed them the duty of care. *Pa. R. R. Co.* v. *Snyder*, 55 Oh. St. 342; *Teal* v. *American Mining Co.*, 87 N. W. Rep. 837 (Minn.); *cf. Caledonian Ry. Co.* v. *Mulholland*, [1898] A. C. 216. The same reasoning seems equally applicable to the principal case. But courts have refused to apply this doctrine to the sale of machinery. *Heizer* v. *Mfg. Co.*, 110 Mo. 605. The vendor, however, is held liable if he knows of the defect in the article; and in a few instances he has been so held on the ground of negligent misrepresentation where he failed to know of the defect through carelessness. *Lewis* v. *Terry*, 111 Cal. 39; *Blood Balm Co.* v. *Cooper*, 83 Ga. 457; *cf. George* v. *Skivington*, L. R. 5 Ex. 1.

These several classes of transactions in which the defendant's liability, apart from contract, is admitted, seem to point to a general principle, large enough to include the principal case, namely that one who puts articles on the market owes the duty of care to all those persons who ought reasonably to have been foreseen as likely to use them. See *Bishop* v. *Weber*, 139 Mass. 411. The tendency of modern decisions is certainly to extend liability for negligence in this direction. The extension suggested would be the logical consequence of those already made.

The cases which rest liability upon misrepresentation suggest the question how far an actual reliance upon the defendant's misrepresentation is necessary to the plaintiff's suit. If the action is treated strictly as an action for misrepresentation actual reliance is essential. But under such interpretation the rule of *Blood Balm Co.* v. *Cooper*, *supra*, would be of narrow application. A servant using his master's machine doubtless assumes that some one has taken care to have it suitable for the intended purpose, but he certainly does not consciously rely on an implied representation to that effect by the maker. The cases lay little stress on this element of actual reliance. Nor does it appear why such reliance should be of more importance here than where the liability is rested upon an implied "invitation" or the "imminently dangerous" nature of the goods.

THE PROTECTION OF INTERESTS ACQUIRED UNDER AN OVERRULED DECISION. — It is axiomatic that the courts, applying the principle of *stare decisis*, will not overrule a line of decisions, or even a single decision which has been acted upon as a rule of property, except for the strongest reasons. But what is the effect when such a decision is overruled? It has been held by the Supreme Court in applying state law, that they will not follow a state decision overruling a line of decisions, in reliance on which the parties to the suit have made commercial contracts. *Gelpcke* v. *Dubuque*, 1 Wall. 175. This is perhaps due to the fact that the court's jurisdiction is for the protection of citizens of other states. See 4 HARV.

L. REV. 311. A question of this sort, not involving federal jurisdiction, arose in Pennsylvania recently. The Supreme Court of the state had in 1846 decided that precatory words after an absolute bequest of personalty created a trust. *Coates' Appeal*, 2 Pa. St. 129. The case was remanded to the lower court and finally in 1853 again came before the Supreme Court, which overruled the first decision and held that no trust was created. *Pennock's Estate*, 20 Pa. St. 268. Between these two dates, the will in question in the principal case had been made and the testator had died. It was held on probate that in construing the precatory clause contained in the will, the rule in *Coates' Appeal* was to be applied and not that in *Pennock's Estate*. *Lisle's Estate*, 58 Leg. Intel. 490 (Orphans' Ct.).

The principal case being in a lower court is perhaps of not much weight in a question of this sort, but a similar doctrine has been before suggested in Pennsylvania. *Menges* v. *Dentler*, 33 Pa. St. 495; see also *Geddes* v. *Brown*, 5 Phila. 180. And in New York a creditor who refused a tender of greenbacks after the United States Supreme Court had decided that the legal tender acts were unconstitutional and before that decision was overruled was protected. *Harris* v. *Fex*, 55 N. Y. 421; *Stockton* v. *Dundee, etc., Co*, 22 N. J. Eq. 56, *contra*. *Cf. Harbert* v. *Monongahela River R. Co.*, 40 S. E. Rep. 377 (W. Va.).

The view of Blackstone that the court never makes law, but simply declares what it has always been, at first sight would seem inconsistent with such a doctrine, since an overruled decision, he would say, never was law at all. The inconsistency is more apparent than real, however, since it is not necessary, if the doctrine be made to rest simply on grounds of sound policy, to say that the overruled decision was law at any time. 1 BL. COM. 70. Blackstone's view, moreover, has been criticised by Austin and others, and as a matter of historical fact it must be said that the judges in some sense do make law. 2 AUSTIN, JUR., 4th ed., 655; see 5 HARV. L. REV. 172. But will the courts protect rights which have accrued under a decision which has been overruled? The solution must depend on considerations of expediency and sound policy. Obviously justice in particular cases would result from such protection; but some difficulties are suggested. It is said that the courts, as a logical conclusion, will be precluded from overruling a decision involving a rule of property where the rights of the parties to the suit have accrued since that decision, without preserving the rights of those parties; and that, if such rights are preserved, it is practically a moot case, since no others are before the court. Practical difficulties may also arise in the application of the doctrine. See 9 AM. L. REV. 381, 408. These objections are serious, but perhaps not insuperable. The court while following the prior decision could by means of a *dictum* give notice that it would not do so in future; and consequently, on rights accruing after their notice, could squarely overrule the prior decision. If the doctrine is to be applied, it must rest largely in the discretion of the court when it is to be applied and where the line is to be drawn. Thus as intimated above it is a question of sound policy, and it may perhaps be doubted whether the disadvantages of confusion and uncertainty would not more than offset the benefit to the few, whose rights are protected. It would seem, however, that the court should follow the prior decision, if at all, only where the parties have actually relied on it, or may be reasonably presumed to have done so.